

# Memorandum

**TO:** BUILDING BETTER  
TRANSPORTATION COMMITTEE

**FROM:** Del D. Borgsdorf  
Susan F. Shick

**SUBJECT: CONSTRUCTION IMPACT  
MITIGATION PLANS**

**DATE:** 03-17-03

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**COUNCIL DISTRICT:** Citywide

## **RECOMMENDATION**

1. Adopt resolutions by the City Council and Redevelopment Agency Board approving a policy requiring the preparation of Construction Impact Mitigation Plans for publicly funded extraordinary construction projects.
2. Direct staff to develop a cooperative agreement with the Valley Transportation Authority to address the mitigation of impacts created during the construction of extraordinary projects.  
CEQA: Not a project.

## **BACKGROUND**

At the May 28, 2002 City Council meeting staff presented an update on the development of a Construction Impact Mitigation Policy. Staff was directed to return in 90 days with policies and a draft ordinance for the implementation of Construction Impact Mitigation Plans (CIMP) for extraordinary projects. Staff was to define which types of projects would be considered "extraordinary," examine special construction impact mitigation zones, how the current program is working and examine potential monetary compensation options. Councilmembers Cortese and Chavez requested that both a policy and an ordinance be brought forward for discussion to allow Council to decide which would be the more appropriate method for implementation.

On August 30, 2002, Staff submitted an interim report to the City Council identifying additional outreach efforts that needed to be conducted prior to development of a policy and ordinance for Council review.

For the past several months staff has been working with the VTA in preparation for the potential implementation of either an ordinance or City policy that would affect the planned BART and light rail extension projects. These meetings have focused on the expectations of the City in regard to major construction projects and understanding the procedures for outreach and construction implemented by the VTA for its major projects. The result of these discussions is

the recognition that there may be alternatives to policies and ordinances to protect San Jose businesses and residents from undue hardships associated with extraordinary construction projects.

## **ANALYSIS**

Prior staff reports have discussed the typical and likely impacts of major construction projects. The recommendations for how to deal with these impacts through a policy program are enumerated below. Additionally, ordinance language has been drafted and is included with this report for consideration by the Council. Adoption of the ordinance is not recommended for two primary reasons: (1) the intent is to require Construction Impact Mitigation Plans solely for “extraordinary projects,” which by definition are rare and can be accommodated with contractual agreements and (2) adoption of a policy for City and Redevelopment Agency projects is sufficient to ensure that direction is clear to project managers and contractors that the public must be considered when developing and implementing projects.

A primary motivation for creating Construction Impact Mitigation Plans is the planning of several large-scale projects, especially BART into Downtown and multi-block projects, such as the CIM Mixed Use Development Project. As currently planned, BART would be constructed by the VTA in City rights-of-way. Consequently, the VTA would be required to obtain encroachment permits for any and all work. The City can place reasonable requirements associated with the construction on the encroachment permits. However, through discussions with VTA staff there is agreement and understanding that a cooperative agreement between the City and the VTA may be a better device for clearly laying out the obligations, expectations, and responsibilities of both parties. Preliminary outlines of such an agreement are being developed by staff and could be available for review and approval by June 2003.

Projects such as the CIM Mixed Use Development Project has included the requirement for development of a Construction Impact Mitigation Plan in the Development and Disposition Agreement. CIM and Redevelopment Agency staff are already in the process of creating the CIMP for this project.

BART and the CIM Project could be subject to Construction Impact Mitigation Plans, because they are “extraordinary projects,” as defined below. Through the outreach for this report and the conceptualization of projects likely to warrant CIMPs, City and Redevelopment Agency staff have recognized that there is room for improvement in the communication and coordination of the delivery of other projects, both public and private, that require City or Redevelopment Agency involvement. Therefore, this report recommends the Council adopt a policy that directs staff to formalize procedures and actions to improve the service delivery of all projects within the City of San Jose.

## **VTA Cooperative Agreement**

As noted above, VTA, City, and Redevelopment Agency staffs have engaged in numerous discussions about the goals and issues surrounding Construction Impact Mitigation Plans. The VTA staff recognizes and acknowledges the City Council's concern that extraordinary projects, such as BART construction, could have significant adverse impacts on the businesses along the planned route, especially in the Downtown. The VTA staff also recognizes and agrees that they are required to obtain encroachment permits from the City for any work they cause to be performed in City rights-of-way. The primary concern raised by the VTA staff is that conditions attached to encroachment permits be reasonably related to the project at hand. The efforts to engage the public in information and advice early in the planning process and throughout the construction period are done to some degree by the VTA currently. The concerns they have expressed focus on the potential expectations for direct monetary assistance to businesses. Rather than codify the requirements for a plan that could imply the VTA would be providing such compensation to merchants, the VTA staff requested consideration of a cooperative agreement approach.

City and Redevelopment Agency staff support the concept of a cooperative agreement with VTA to define roles and responsibilities of all parties throughout the planning and construction of a project such as BART. Cooperative agreements provide greater flexibility to both organizations to meet the specifics of a project, or a phase of a project. By virtue of this contractual relationship the City is better able to tailor mitigation plans and performance standards, than through an ordinance that must fit a wide range of potential projects, proponents, and issues.

Based on other cooperative agreements between the City and VTA, and on cooperative agreements between other cities and BART, staff has begun to develop an agreement with VTA for the BART project. The initial agreement would identify roles and responsibilities for issues such as plan review, environmental mitigation monitoring, and construction impact mitigations. As envisioned, the agreement would acknowledge the need for amendments as the project becomes more developed and the impacts and consequent mitigations become more clearly identified. With Council direction, the first agreement would be available for review and approval by the City Council in June 2003.

### **A. Levels of Impact**

Construction impacts generally fall into four categories; physical, environmental, communications and other impacts. The three levels of project impacts and, therefore, mitigation measures are based on the type of project, duration, location, and intensity of construction. Mitigation types are briefly described below and examples of mitigation measures are described more fully in the Policy found at Attachment A. This list is not intended to be comprehensive and additional measures may be appropriate depending on the specific character of each project and the area of impact.

Although three general types of projects are described below, only “Extraordinary Projects” would require preparation of a Construction Impact Mitigation Plan. Projects with less extensive impacts are being defined to help create a more consistent and higher standard of behavior in City and Redevelopment Agency projects. The attached Policy provides direction to staff to implement not only the requirements for extraordinary projects, but to fundamentally improve the way municipal projects are routinely handled.

**Standard Projects** - These projects include all construction projects affecting City streets. Construction mitigation for standard projects includes workhour restrictions, traffic control plans, and dust and noise control. It is also usual that encroachment permits and City/ Redevelopment Agency construction contracts also require sidewalk and street repairs be constructed to minimize disruption to adjacent businesses, to minimize impact to normal pedestrian flow, and to provide a finished product consistent with City standards. The Department of Public Works and the Redevelopment Agency routinely impose conditions and contract language to ensure safe and clean construction sites while minimizing unnecessary impacts to residents, business and the traveling public. Because these mitigations are automatically included in all projects, they comprise the baseline standard. As part of the recommended Policy directive, a more rigorous and comprehensive evaluation of City and Redevelopment Agency construction projects will assure that baseline standards are met on all projects.

**Special Projects** – In addition to the baseline conditions listed above, there is another level of attention when a single project impacts a specific area for 30 days to one year, or when two or more projects occur simultaneously and in the same proximity. Projects located within the Greater Downtown, major retail areas and near schools and hospitals would be subject to these additional measures by definition. Consequently, by defining this level of evaluation and mitigation, the attention to impacts on immediately adjacent properties, which is the practice generally used in the Downtown, will become formalized upon adoption of a Policy. For projects deemed special, project signage would be required that would identify the type of work under construction, duration of the work, and project contact information, such as telephone numbers for the project manager and contractor. Additional measures that have been used in conjunction with Redevelopment Projects could include regular community meetings, parking assistance, "Businesses Open During Construction" signs, car wash vouchers, and Business Association outreach. Although not required by permit or construction contract, virtually all projects under construction in the Downtown employ some or all of these mitigation and assistance measures because they are generally unique and special by their nature and location.

**Extraordinary Projects** – These are projects affecting the City right-of-way that have durations longer than one year and pose significant impacts to vehicular and pedestrian movements throughout the surrounding business and residential community. Projects such as the proposed BART and Light-Rail extensions into downtown, as well as major development projects such as the new City Hall fall into this category. Proponents of extraordinary projects would be required

to formalize their efforts in a written plan submitted for approval to the Director of Public Works or the Redevelopment Agency Executive Director for approval and inclusion in construction contracts, or in cooperative agreements with other entities.

An extraordinary construction project is defined as one in which the construction in the right-of-way is scheduled to last at least twelve months and one of the following conditions exists:

1. The project will impact vehicular or pedestrian traffic at two or more signalized intersections;
2. The project will interfere with pedestrian access for the length of a block;
3. The project is located within the lesser of 500 feet or one block of another project located in the right of way; or
4. The project is located in a Construction Impact Zone.

## **B. Construction Impact Zones**

Construction Impact Zones would include identified business districts and the Downtown Core and are listed in Attachment B. Additional areas could be included in the future, depending upon the success of this initial Construction Impact Mitigation Plan effort, and identified community needs.

## **C. Current Efforts**

Previous staff reports have discussed the current efforts and programs used on City and Redevelopment Agency programs. The efforts to identify and minimize impacts on businesses affected by construction projects depend on the nature of the project and the attention of specific project managers. Consequently, the efforts and measures are not consistent and therefore are difficult to assess as to their effectiveness. The recommended policy direction would ensure consistency of effort on all projects, not just those that would be defined as extraordinary. This application of conscious effort throughout the City and Redevelopment projects will improve the quality of construction projects and should continue to minimize the direct impacts of construction on the adjoining and neighboring businesses and community.

## **D. Other Impacts**

Other potential impacts will be addressed through an analysis of potential reduced visibility and patronage, parking and delivery impacts and loss of services. Preparation of the mitigation plan will include appropriate measures to be taken to alleviate these impacts to business affected by construction of extraordinary projects. To help define the likely or potential impacts, the project developer would be required to meet with the business community and other affected interests

within the planned construction zone. The importance of involving this community in the development of the Plan cannot be overstated and should vastly improve the ability of the businesses to survive the construction, because they have helped define their needs and expectations. The Construction Impact Mitigation Plan is intended to include plans and descriptions of the business needs and expectations and the process by which they will be met.

### **Construction Impact Mitigation Plans**

A Construction Impact Mitigation Plan will be conceptual in nature when first submitted, and will be further refined as a contractor is selected and prior to the start of construction. Construction Impact Mitigation Plans for extraordinary projects will include detailed maps of construction phases, location and timing of activities as well as an analysis of the potential physical, environmental and other impacts that construction will have on the surrounding community. The plan will also include specific mitigation measures to be utilized to lessen the impacts created during construction of the project. A comprehensive communications plan will also be developed to include public information and outreach efforts as well as newsletters, meeting notices, project area signage and media releases.

It is important that the CIMP be a dynamic document that is adjustable to the changes in need of the community and the variety of unanticipated events that attach themselves to all construction projects. It is likely that the details of implementation will evolve throughout the construction project, but the process for identifying and evaluation impacts and mitigations will be included in the Plan.

Furthermore, the proposed policy requires that any agreement entered into between the City or Redevelopment Agency and another public entity related to the construction of a project that would come within the definition of “extraordinary construction project” would provide for the preparation of a Construction Impact Mitigation Plan. The Plan would be approved by the Director of Public Works, or for Redevelopment Agency projects by the Executive Director, and reported to the City Council/Redevelopment Agency Board in the various staff reports and memos that ultimately authorize the project to proceed. If the sponsoring agency and the City enter into a cooperative agreement, it would include a plan to address construction impacts.

Because the Construction Impact Mitigation Plan will develop over time, it is recommended that the approval, implementation, and regulation be handled at the staff level. The City Council provides a venue for settlement of disagreements, should they arise, between the City and the project sponsor. Providing policy direction to the City and Redevelopment Agency staff for the preparation of Construction Impact Mitigation Plans is the essential City Council role.

## **PUBLIC OUTREACH**

The Redevelopment Agency and Public Works staff have met with several neighborhood and business associations to obtain input on what mitigation measures have worked well in the past and where improvements can be made. These groups include the Downtown Association and the East Santa Clara, The Alameda, West San Carlos, and Winchester Business Associations. Additional outreach efforts were made to business owners along the Capital Corridor Light Rail Project. The concepts and mitigation measures contained in this report are consistent with those of the community groups that met with staff. Staff also met with representatives of the development community as well as the VTA to discuss how the preparation of construction impact mitigation plans would affect the development of their projects in San Jose.

## **COORDINATION**

This memo and policy have been coordinated with the City Attorney's Office, the Departments of Public Works and Transportation, and the Redevelopment Agency General Counsel Office.

## **ALTERNATIVES**

The alternative to the recommended policy and cooperative agreement process is the adoption of an ordinance requiring Construction Impact Mitigation Plans for all extraordinary projects, including both publicly and privately funded projects. The ordinance process is not recommended primarily because policies and cooperative agreements provide greater flexibility for resolving unique projects and situations for publicly funded projects and it is rare to have privately funded projects that fall into the extraordinary project category. Additionally, because the Construction Impact Mitigation Plan must include a discussion on other impacts, an ordinance codifies and restricts the acceptable methods of resolving or mitigating those impacts. Through discussions with VTA staff it is apparent that while the VTA recognizes the City's authority to condition work in the public right-of-way through the encroachment permit process, they do not believe there is an reasonable connection between their projects and a requirement for economic support to businesses.

Although an ordinance carries greater legal authority than a policy, the policy direction to City and Redevelopment Agency staff to improve coordination and communication with the community surrounding projects is clear. Implementation and follow through will occur through training of all permitting and plan review staff. Additionally, improved checklists and updated standard specifications will be developed for inclusion in all City and Redevelopment Agency construction contracts, as well as encroachment permits.

### **FISCAL IMPACT**

It is not anticipated that there will be significant fiscal impacts to the City or Redevelopment Agency to implement the policy and the development of Construction Impact Mitigation Plans. There will be staff time required to review plans prepared by outside agencies or private projects, which may be recoverable through the project permit fees, if applicable. Because much of the analysis on physical and environmental impacts is addressed through the environmental review process, the preparation and review of a Construction Impact Mitigation Plan would not involve considerable additional work either by the project proponent or City staff.

### **CEQA**

Not a project.

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DEL D. BORGSDORF  
City Manager

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SUSAN F. SHICK  
Executive Director of the  
Redevelopment Agency

Attachments A & B